

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 07-4826 CW

(Bk. No. 06-42423 LT-11)

In re:

DEAN GORDON POTTER,

Debtor.

ORDER WITHDRAWING
REFERENCE AND DENYING
WITHOUT PREJUDICE MOTION
TO TRANSFER VENUE

The United States, on behalf of its agency, the Internal Revenue Service (IRS), moves for withdrawal of this Court's reference, to the United States Bankruptcy Court for the Northern District of California, of Adversary Proceeding No. 07-4066 AT (AP) and Debtor's Objection to the IRS claim (Debtor's Objection to Claim), two matters in the bankruptcy case entitled In re Dean Gordon Potter, No. 06-42423 LT-11. The Court has reviewed Bankruptcy Judge Leslie Tchaikovsky's Report and Recommendation Re: Motion to Withdraw the Reference of Jurisdiction, as well as Debtor's objection to the report. The Report describes the facts

1 and proceedings regarding the matters at issue. The Court agrees
2 with the Bankruptcy Judge's view that the United States' motion to
3 withdraw the reference is timely. The Court finds that permissive
4 withdrawal of the reference is appropriate, so that the AP and
5 Debtor's Objection to Claim can be decided in the same court that
6 decides Unico Services Inc. v. United States, case no. 2:07-CV-
7 01009-MCE-KJM (E.D. Cal.) which is currently pending in the Eastern
8 District of California. The motion to withdraw the reference is
9 GRANTED. The United States' motion to transfer the AP and the
10 Objection to Claim to the district court for the Eastern District
11 of California is DENIED WITHOUT PREJUDICE.

12 This Court does not wish to burden the Eastern District Court
13 with a case which was first filed in this district, unless that
14 court wishes to retain the case. In his objection, Debtor argues
15 that, if the AP and Debtor's Objection to Claim are to be
16 consolidated with the UNICO suit pending in the Eastern District of
17 California, the Eastern District case should be transferred here.
18 However, this Court lacks jurisdiction over the case that is
19 pending in the Eastern District; therefore it has no authority to
20 transfer it here. The United States indicates that if this Court
21 withdraws the reference but does not transfer the case to the
22 Eastern District, it will move the Eastern District Court to
23 transfer its case here. The United States shall do so promptly.
24 Apparently, UNICO would not oppose such a motion. If the case is
25 transferred to this district, a notice of related cases should be
26 filed and this Court will relate the cases. If the Eastern
27 District Court declines to transfer its case to this district, the
28

1 United States shall renew its motion to transfer the AP and
2 Debtor's Objection to Claim, and the Court will grant the transfer
3 to the Eastern District.

4
5 IT IS SO ORDERED.

6 12/18/07

7 Dated: _____



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DEAN GORDON POTTER et al,

Case Number: CV07-04826 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

DEAN GORDON POTTER et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 18, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

U.S. Bankruptcy Manager
U.S. Bankruptcy Court
1300 Clay Street
Suite 300
Oakland, CA 94612

Leslie Tchaikovsky
U.S. Bankruptcy Court Judge
U.S. Bankruptcy Court
Northern District of California
1300 Clay St. #300
P.O. Box 2070
Oakland, CA 94604

Minnie Loo
US Dept of Justice, Office of US Trustee
1301 Clay Street
Suite 690N
Oakland, CA 94612-5217

Dated: December 18, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk